

# ***PROPOSED* CONTRACT FOR SUPERIOR ENVIRONMENTAL PERFORMANCE WITH MEGTEC Systems, Inc.**

This Contract for Superior Environmental Performance is entered into by the State of Wisconsin through its Department of Natural Resources (WDNR) and MEGTEC Systems, Inc. on (month and day) \_\_\_\_\_, 2005.

## **I. INTRODUCTION**

- A. The State of Wisconsin is committed to providing a healthy and sustainable environment, to promoting the movement toward zero waste, and to protecting and enhancing the resources of the state for this generation and for generations that follow.
- B. The Department believes that entering into a Contract with MEGTEC Systems will produce environmental performance beyond what is required under existing law.
- C. The Environmental Results Act §.299.83 Wis. Stats. authorizes the WDNR to enter into a Contract to sustain and expand a Green Tier applicant's superior environmental performance.
- D. MEGTEC Systems has implemented an Environmental Management System (EMS), and the DNR has determined that the EMS is in conformance with the standards for environmental management systems issued by the International Organization for Standardization (ISO) and that the EMS is appropriate to the nature, scale and environmental impacts of MEGTEC Systems' operations
- E. The DNR has reviewed MEGTEC System's proposal for superior environmental performance and has determined that the co-benefits identified in this Contract are proportional to the environmental benefits arising from MEGTEC System's performance under this Contract.

Therefore, in order to produce continuous improvement in the state's environment, economy and quality of life, the DNR and MEGTEC Systems agree to work cooperatively under the terms of this Contract in order to achieve the goals laid out in this Contract.

## **II. Overview**

### **A. Definitions.** As used in this Contract:

“State” and “State of Wisconsin” means the State of Wisconsin, acting through the Department of Natural Resources.

“DNR” means the Wisconsin Department of Natural Resources.

MEGTEC Systems means MEGTEC Systems, Inc. a subsidiary of Sequa Corporation operating in Wisconsin at 830 Prosper Road, DePere.

### **B. Environmental Management System (EMS).**

MEGTEC Systems agrees to implement and maintain their EMS for the life of this Contract. Their commitment to implementing and maintaining their EMS includes commitments to the following:

1. MEGTEC Systems agrees to make documentation of their EMS available, upon request, to the DNR for review.
2. MEGTEC Systems agrees to make available upon request to the DNR findings of non-conformance and the status of the corrective actions arising from an audit.
3. MEGTEC Systems agrees to have an outside environmental auditor (approved by the DNR) conduct an annual EMS audit, and to provide their findings to the DNR in the annual report described in section IV.B.
4. MEGTEC Systems agrees to submit to the DNR written reports from each future management review of the EMS within 30 days after the review.
5. MEGTEC Systems agrees to provide the DNR timely notice of EMS audits, and to invite the DNR to observe the audit. The DNR represents that there is a benefit to the Department served by authorized representatives of the Department accompanying the contractor during such audit activities. These benefits include, but are not limited to, affording the Department a better understanding of the facility and evaluating the relative effectiveness of the EMS. In consideration for these benefits, the Department agrees that it will not seek enforcement nor refer the matter to other State or federal departments or agencies for enforcement of any noncompliance matters discovered by the Department as a result of its participation provided MEGTEC Systems complies with the reporting requirements under s. 299.83(6m)(a).
6. MEGTEC Systems agrees to review its EMS at least annually, and to provide to the DNR an annual identification of objectives and targets.

### **C. Annual Compliance Audit**

1. MEGTEC Systems agrees to conduct an annual audit of compliance with environmental requirements that are applicable to the facility.
2. MEGTEC Systems agrees to provide the DNR timely notice of any compliance audit, and to invite the DNR to observe the audit. The DNR represents that there is a benefit to the Department served by authorized representatives of the Department accompanying the contractor during such audit activities. These benefits include, but are not limited to, affording the Department a better understanding of the facility and evaluating the relative effectiveness of the EMS. In consideration of these benefits, the Department agrees that it will not seek enforcement nor refer the matter to other State or federal departments or agencies for enforcement of any noncompliance matters discovered by the Department as a result of its participation in such audit provided MEGTEC Systems complies with the reporting requirements under s. 299.83(6m)(a).
3. MEGTEC Systems agrees to provide the compliance audit results to the DNR in a timely manner.
4. If violations are found during an audit, MEGTEC Systems agrees to provide to the DNR a description of measures that will be taken to prevent future violations. These measures may include changes to the underlying Environmental Management System.

**D. Superior Environmental Performance**

1. As part of MEGTEC Systems' application for a Tier 2 Contract, MEGTEC Systems has demonstrated a history of superior environmental performance. This demonstration is attached as Appendix 2.
2. In addition, MEGTEC Systems commits to sustain the environmental gains that have been made to date, and to implementing the measures described in Appendix 3 that are designed to produce superior environmental performance. These measures include
  - a) maintaining their reduction in hazardous wastes by continuing their programs of aerosol can piercing and aerosol can recycling,
  - b) customer coating removal,
  - c) coating usage restrictions that are greater than required by DNR permit or code,
  - d) maintaining their efforts to minimize paint used per month,
  - e) storing and re-using non-biodegradable materials,

- f) substituting more environmentally friendly cleaning solution for clean-up of paint operations,
- g) encouraging their top 300 suppliers to develop an Environmental Management System, and
- h) implementing recommendations from the Energy Conservation Green Belt program.

### **III. Developing an Interested Persons Group**

- A. MEGTEC Systems commits to maintaining an interested persons group to provide a process to increase transparency and trust in this Tier 2 contract. The interested persons group will consist of persons who live, own a business or work within a reasonable proximity to MEGTEC Systems, or who otherwise have an interest in the workings of this Contract. The parties will work together on the composition of the interested persons group.
- B. MEGTEC Systems will meet with this group on a semi-annual basis to solicit public comments concerning participation under this Contract. A representative from MEGTEC Systems will take notes during these meetings. These notes will be compiled into minutes that summarize the information discussed at each meeting. Interested group members will have an opportunity to approve or suggest corrections to the minutes at the next meeting. Once approved by the interested persons group, a copy of the minutes will be filed at the MEGTEC Systems offices and a copy of the minutes will be posted on MEGTEC's website for public viewing.
- C. The parties will review the Interested Persons Group after one year. If MEGTEC Systems has taken reasonable steps to secure participation in the Interested Persons Group, and has been unable to generate interest in this group, the parties shall consider other options, including suspending the Interested Persons Group.

### **IV. SPECIFIC COMMITMENTS**

- A. MEGTEC Systems agrees to submit results of each audit of its Environmental Management System, and each compliance audit done to the DNR. If a non-conformance or non-compliance is found during either audit, and if MEGTEC Systems seeks to avail itself of the protections under the Deferred Civil Enforcement provision of Green Tier (§. 299.83(6m)(d)), the timeline for completing the corrective action must be less than 90 days (unless the parties agree to extend it).

- B. MEGTEC Systems will submit an annual report to the DNR by January 31<sup>st</sup> for the preceding calendar year (beginning with calendar year 2006) summarizing accomplishments, and any non-conformances and non-compliances discovered during the preceding year. This annual report shall also provide data on the generic suite of measures that is attached as Appendix 4.
- C. Following receipt of the annual report, the parties will discuss what will be tracked and reported in the following year. The specifics will link to the objectives set for the year, and any corrective actions that become necessary following an audit.
- D. MEGTEC Systems will use its best efforts to bring both suppliers and customers together at least annually in a strategic discussion regarding reacting to and progressively leading in areas such as producer responsibility, design for the environment, and sustainability.
- E. In those instances where MEGTEC Systems is operating at a level beyond what is required under law or permit, MEGTEC Systems agrees not to backslide without notifying DNR.

## **V. Department of Natural Resources' commitments**

- A. In exchange for MEGTEC Systems fulfillment of their obligations under this Contract (including the obligation to disclose any non-conformance or non-compliance found during an audit), the DNR will not seek to bring any civil action, issue any order or seek any judgment nor refer the matter to other State or federal departments or agencies for enforcement related to the environmental responsibilities covered under this Contract against MEGTEC Systems.
- B. If a non-conformance or non-compliance that is reported to the DNR under IV.A. is not completely corrected, or similar violations occur in the future, , the DNR may, after providing an opportunity for the parties to talk, issue a letter of non-compliance (LON), a notice of non-compliance (NON) or a notice of violation (NOV) with or without terminating this contract. In order to determine whether a second event that would trigger a LON, NON or NOV is a continuation of an uncorrected earlier event, the DNR shall examine the corrective actions taken by the participant and determine whether they were reasonably designed and implemented.
- C. The DNR will provide a single point of contact within the agency to MEGTEC Systems during the life of this Contract.
- D. The DNR authorizes the use of the Environmental Results Program logo on written materials promoting the covered facility(s) or activities and agrees to

work with MEGTEC Systems on producing an annual press release that describes MEGTEC Systems participation in the Green Tier program.

## **VI. General Provisions**

- A. Enforcement. This Contract is governed by Wisconsin law.
- B. All agreements and covenants contained herein are severable, and in the event any of them shall be held invalid by any competent court or agency, this Contract shall be interpreted as if such invalid agreements or covenants were not contained herein.
- C. This Contract intends to parallel, to the extent possible, the timing laid out in any existing permits.
- D. Amendment. This Contract may be amended only in writing by the principals to this agreement or their successors. An Amendment of this Contract may require an additional public notice requirement after the parties have negotiated the new language. If the Amendment is largely a technical amendment, no additional public notice will be required. If the Amendment contains substantive additions to, or changes to the Contract, the parties agree that the DNR will provide an additional public notice and may provide an additional public information meeting.
- E. Construction. This Contract will be binding, during its effective period, on the parties hereto but is not intended to confer any rights, remedies or obligations upon any other persons.
- F. Activities Covered Under this Contract. MEGTEC Systems commits to comply with all current applicable environmental requirements. Any provisions of permits or approvals covered by this Contract that are not specifically superseded by this Contract shall remain in effect.
- G. Access to Records. For the purposes of interpreting, understanding or assessing compliance with the Contract, and subject to any legally recognized privilege and reasonable notice, the DNR; 1) will be permitted access during office hours to inspect and request copies of any records or documents related to the Contract, and 2) may interview directors, officers, employees, and agents of MEGTEC Systems regarding any matters related to the Contract, subject to the reasonable convenience of MEGTEC Systems, and without restraint or interference from MEGTEC Systems.
- H. Effectiveness and length of contract. This Contract shall be effective upon signature of both parties and will remain in effect for five (5) years, and it may

be extended for periods of up to five (5) years upon the mutual agreement of the parties.

- I. Termination. If MEGTEC Systems fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, the DNR may terminate this Contract by giving thirty (30) days written notice of termination, specifying the alleged violations, and the effective date of the termination. It shall not be terminated if, upon receipt of the notice, MEGTEC Systems promptly cures the alleged violation prior to the end of the thirty (30) day period. MEGTEC Systems reserves the right to appeal any decision of the DNR pursuant to this paragraph as provided for under § 227.52, Wis. Stats., or any other applicable law.

If the State fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MEGTEC Systems shall have the right to terminate this Contract by giving thirty (30) days written notice of termination, specifying the alleged violations, and the effective date of the termination. It shall not be terminated if, upon receipt of the notice, the State promptly cures the alleged violation prior to the end of the thirty (30) day period.

- J. Warranty of Authority. Each of the persons signing below represent and warrant that he has the authority to execute this Contract on behalf of the party for which he signs.

Signatures:

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By\_\_\_\_\_

Scott Hassett, Secretary

MEGTEC Systems, Inc.

By\_\_\_\_\_

Dr. Mohit Uberoi, PRESIDENT